

NGUYEN (Migration) [2021] AATA 2541 (15 July 2021)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANTS: Mr VAN CAP NGUYEN
Miss THI PHUONG ANH NGUYEN

CASE NUMBER: 1804510

HOME AFFAIRS REFERENCE(S): BCC2014/3565182

MEMBER: Meena Sripathy

DATE: 15 July 2021

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner) visa:

- cl 820.211(2) of Schedule 2 to the Regulations
- cl 820.221(1) of Schedule 2 to the Regulations;
- and the second named applicant

meets:

- cl 820.311 of Schedule 2 to the Regulations.

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Statement made on 15 July 2021 at 2:18pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – validly married – financial aspects of relationship – extent of applicant’s knowledge of sponsor’s history of gambling – household and social aspects of relationship – nature of commitment – married soon after meeting, but marriage now 6 years’ duration – joint travel and family activities – some inconsistent evidence because of passage of time and stress of proceedings – member of family unit – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A(3), Schedule 2, cls 820.211(2)(a), 820.221(1)(a), 820.311

CASES

He v MIBP [2017] FCAFC 206

Re MILGEA and Dhillon [1990] FCA 144

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 2 February 2018 to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The first named applicant (the applicant) applied for the visa on 28 December 2014 on the basis of his relationship with his sponsor, Ms Thi Thu Nguyen. The second named applicant (secondary visa applicant) applied for the visa on the basis of being a member of his family unit. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl 820.211 because the delegate was not satisfied on the evidence provided that he and the sponsor were in a genuine spouse relationship as that term is defined in s5F of the Act, and therefore she did not meet cl.820.211 and, accordingly, was not satisfied that the second named visa applicant satisfied cl.820.321.
4. The applicants appeared before the Tribunal on 25 May 2021 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor, Ms Thi Thu Nguyen. The Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
5. The applicants were represented in relation to the review by their registered migration agent.
6. The issue in the present case is whether the first named visa applicant is in a spouse relationship with the sponsoring partner at time of application and time of decision.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The applicant is a 51 year old Vietnamese national. He has parents, 6 siblings and two sons in Vietnam and a daughter (the secondary visa applicant) in Australia. The sponsor is a 50 year old, Vietnamese born, Australian citizen. Her parents are deceased, and she has 5 siblings and 2 step siblings in Australia as well as two daughters.
9. The parties claim they met on 1 July 2014 at a coffee shop in Canley Heights, and started going out around a week later. They claim they 'fell in love' on 1 August 2014 and he then departed Australia at the end of that month. The applicant returned to Australia on 13 October 2014 and proposed marriage to the sponsor on 11 November 2014 and they married on 20 December 2014. The present application was lodged on 28 December 2014. The parties claim to be living together at an address in Canley Vale. The applicant declared a previous marriage to Thi Dua from October 1995 which ended in divorce on 25 February 2014 because of disagreements and differences in lifestyle. They had two children of this relationship. The applicant does not declare any previous relationships of the sponsor.

10. Among the supporting documents provided with the application are the following: marriage certificate; Form 888 Statutory Declarations from various people, including long term friends and the sponsor's daughter; relationship statements from the applicant and sponsor; birth certificates of sponsor's children indicating no father named; payslips and course fee receipts relating to the secondary visa applicant; correspondence addressed to applicant and sponsor showing common address, including drivers licences, superannuation letter, rates notice, water and phone bills; joint bank account statement; sponsor's Westpac account; various receipts in joint names .
11. The delegate, on consideration of the evidence before it, was not satisfied the applicant and sponsor were in a genuine spouse relationship and refused the application on that basis on 2 February 2018.

12. Evidence before the Tribunal

13. In May 2019 and January 2020 the applicant submitted further evidence in support of the continuing relationship including CBA Joint bank account statements for July -December 2018; St George Joint account statement June 2017-July 2018 (nil balance), photos of the couple's visits to Cambodia and Vietnam and in Australia, receipts and other evidence of joint travel overseas in 2019, evidence of applicant's tax assessment for 2019.
14. Following a request for updated evidence issued by the Tribunal in March 2021 the applicant provided the following further evidence: secondary visa applicant's bank statements; applicant's car registration and licence showing address; 8 Form 888s from friends, sponsor's cousins and an uncle attesting to the relationship; joint CBA bank statements 2020-2021; photos; secondary visa applicant's course fee receipts.
15. At the hearing the Tribunal took evidence from the applicant and sponsor separately over several hours. The applicant gave evidence about his current circumstances, family composition of himself and the sponsor, his migration history and the inception and development of the relationship. The Tribunal questioned him about the financial, household, social and commitment aspects of the relationship that it is required to consider under r.1.15A(3). Following his evidence the Tribunal questioned the sponsor about many of the same matters. A summary of the evidence provided follows.
16. The applicant told the Tribunal he lives at the same address since he returned to Australia in October 2014, being the premises owned by the sponsor. Also living there with him are the sponsor, his daughter (the second named applicant), her younger daughter, and the sponsor's uncle, who was visiting from Vietnam last year and was unable to return home due to Covid 19. The applicant could not recall his full name as he refers to him as 'uncle'. At various times over the years other people have lived with them, including the sponsor's younger brother who lived there when the applicant first arrived and left for Melbourne after they married, and an uncle of hers called Tri who is an Australian citizen living in Vietnam who visits from time to time. There is also a granny flat at the back of the property, which is rented out, presently to a single man. Previously a family of four lived there for a few years. The applicant has parents and 6 siblings in Vietnam, all of whom live in Hai Doung except one brother in Hanoi. He has two sons, one is 25 years old, he is working and lives in Hanoi, and the younger one is 14 years and lives with his mother. The applicant said he would like to bring his son to Australia in future for his education. He has discussed this with the sponsor and she is supportive.
17. The applicant provided the following information about the sponsor's background. She came to Australia with her family after escaping from Vietnam via Indonesia in 1997. They came to Melbourne. She has 6 siblings, 5 are in Melbourne and one is in UK. She had a boyfriend and ended up getting pregnant and having her elder daughter. The boyfriend left her when

she fell pregnant. She then moved to Sydney and later had another relationship with another man, fell pregnant with her second daughter. He also left her and she brought up her two daughters alone. She told him all this soon after they met, coincidentally, at a coffee shop in Canley Vale.

18. Regarding the inception and development of the relationship the applicant said they met by chance at the coffee shop in Canley Vale during a visit to Australia. He was there with a friend and she came by also with a friend, but they were not introduced by either of these friends. He stated that the sponsor did not know the friend he was with. They started talking and exchanged numbers. After a few days he called her and they talked over the phone and arranged to go out. Gradually it became more serious. They each talked about their lives. They fell in love. He eventually proposed marriage to her at a restaurant called Dragon Bowl in Caley Vale and she accepted. The Tribunal queried why they progressed to marriage so fast. He said he cannot explain, it was love. The Tribunal noted several discrepancies between his account and the sponsor's account in a written statement provided with the application. In her statement the sponsor said she knew the friend he was with at the café when they first met and he introduced them. She also said that he proposed to her in the car after they had dinner with friends at the Dragon Bowl. In response the applicant said it has been some years and he may have forgot or been confused about some details.
19. Regarding financial aspects of the relationship, the applicant said the sponsor does not work and has not worked since they were together. She gets income from the granny flat rental (\$180 per week) and her uncle gives her around \$500 per month. The applicant works full time, earning \$4000-\$5000 per month. His pay is deposited into the joint account and he transfers \$1000 per month to his personal account, which the sponsor is aware of. He sends \$400 for his son and \$100 for his parents to Vietnam, and the remainder is spent on petrol, coffee and other personal use. The funds in the joint account are used for loan repayments, electricity, water, rates and other general living expenses including food. The sponsor's daughter pays for the internet. They have bought various household items together including televisions, a rice cooker. When asked about the details of the regular loan repayments made from the account the applicant said he does not know the details because he works all day and the sponsor is in charge of the expenditure. The applicant was unaware of the amount of loan owing on the mortgage, or whether there were other loans taken. He bought a car for some \$2000. He has declared the sponsor as his spouse for his tax return.
20. Regarding household arrangements, he goes to work and she stays at home. She cooks, cleans and shops for the family. There is always a meal waiting when he comes home. He leaves home around 5.30 in the mornings, she is often asleep. He drives to work. On weekends she cooks, he helps with some household chores like hanging the washing, they shop together. They visit friends and enjoy going to karioke and drinking beer. He knew some names of her friends. He goes out fishing sometimes with his friends, she has accompanied him fishing a couple of times but didn't like it much.
21. Apart from their two overseas trips, to Vietnam and Cambodia in 2019 and Bali in 2020, they have travelled twice to Melbourne, including one trip for her brother's wedding. They regularly see her elder daughter who lives in Sydney now with her boyfriend. The sponsor travelled twice to Vietnam without the applicant, once to have work done on her teeth, which he contributed towards financially.
22. The Tribunal asked the applicant how they support each other. He said they get along well and support each other by encouraging each other and helping one another. When he had no Medicare and little English to communicate with, she was kind and encouraging of him. He suffers from a gout condition and she helps by making vegetable broths and other food that is good for him. They have future plans to save money so they can travel again to visit

family and support their children's education. She supports bringing his son here in the future. She gets on well with his daughter. The two daughters are nice to each other if not that close. The Tribunal asked if there are any topics they fight or argue about. He said they have some differences but generally if she criticises him he accepts it and tries to fix it. The Tribunal invited the applicant to add anything further. He had nothing further to say.

23. *Evidence from sponsor*

24. The Tribunal asked the sponsor about the ownership of her house. It is solely in her name. She bought it in 2002 for around \$300,000, with a \$240,000 mortgage. She now owes \$600,000. When asked how that occurred she said she has an issue with gambling and lost a lot of money. She took out loans to pay for her debts. Her current loan is with RAMS. She said she told the applicant about this issue after they married. He undertook to help her to repay her loans and he tries to encourage her to stop gambling. She succeeded for a period, and then started again. She has not gambled now for a couple of years. She last took out a loan about 3 years ago. The Tribunal noted that the applicant never mentioned any of this in his evidence and asked her why this may be so. She said he has some issues with his memory and he may have forgotten.
25. The sponsor gave consistent evidence about who is living in the house with them, their respective family compositions and his and her own relationship history. She said she has never met his elder son, but met his parents, younger son and siblings when they visited Vietnam. He has met her siblings in Melbourne and her relatives in Vietnam.
26. The sponsor provided an account of how they met and came to marry. She said they were not introduced, but she knew the friend he was with when they met at the café. It was a coincidental meeting. They went out a few times and he proposed marriage. When asked why she married him given she had not married previously, she said she was getting older and liked him. She told him about her gambling issue and debt and he said he would try and help her to stop and work to help her pay off her debts. She did stop for a period with his encouragement. The Tribunal asked the sponsor if she has ever sought help or counselling for her gambling issue. She said she has not. The applicant talked to her about it and tells her not to do it.
27. The sponsor gave substantially consistent evidence about the financial arrangements between them. She was aware of his personal account with St George and that he deposits \$1000 per month, the remainder of his pay is deposited into the joint account. They use the joint account for all other expenses, including loan repayments, electricity, water, rates, groceries. She does not work, but gets \$180 per week from the granny flat rental and her daughters give her money from time to time but she rarely asks them. Her younger daughter who lives with them pays the internet bill. She was aware the applicant sends money to his son and parents overseas. Apart from the loan repayment to RAMS she was unaware of any other loans. Prior to the relationship, the sponsor said she was receiving Centrelink payments, which ceased after that because she declared her relationship and her husband's income was taken into account. She used to be paid her Centrelink payments into her own personal account, which she still has open but rarely uses.
28. Regarding the household arrangements, she confirmed that she stays home and the applicant goes out to work. She does chores at home and cooks. The applicant helps with outdoor chores on weekends like mowing and hanging out clothes. They go to Sunday markets together, buy food and go out for beer. She was aware of the names of his friends, and mentioned fishing with him on two occasions. They travelled overseas together twice and she went alone twice, once to get work on her teeth and once when her aunty passed away. She did not visit his family on those occasions.

29. Regarding the future, they have discussed saving money for travel and plans for his son to join them here and for his education. The sponsor was aware of the secondary visa applicant's activities here, working and studying. When asked how they support each other, the sponsor spoke of his concern and care for her when she is down or unwell and she supports him when he is tired. Regarding her gambling issue, he supports her by encouraging her to stop and she is trying and has stopped for the last few years. When asked why he did not mention this in his evidence she said he is forgetful and has issues with his memory.
30. The Tribunal asked if the gambling has been an issue or topic of disagreement in the relationship she said they haven't argued about it but they have discussed it. Regarding his health she said first he is fit and healthy, then later mentioned that he suffers from gout and takes medication.
31. Following the sponsor's evidence, the Tribunal asked the applicant why he never mentioned the issue of the sponsor's substantial debts and gambling issue. In response he said that there are some details that he forgot to mention or had difficulty remembering such as her uncle's name. The Tribunal put to him its concern regarding the omission of mention of the gambling issue is that it may suggest motivation for the relationship is that, and this may lead the Tribunal to have concerns about whether it is a genuine spousal relationship or there is another kind of arrangement between them. He denied this, saying that he has always tried to make her stop gambling. Initially he didn't know when she took out the \$100,000 loan, he didn't know she owed that much money. She was waking at night and very stressed about it. He encouraged her then to extend the mortgage and pay it off that way and undertook to help her repay it. But he told her that it had to stop as he cannot continue to repay these loans.
32. The Tribunal invited the applicant, through his representative, to provide any further evidence or submissions to address issues arising from the evidence.
33. On 15 June 2021 the Tribunal received a written submission from the applicant's representative and the following supporting documents:
- Statements from sponsor's CBA account from June 2014 to Sept 2018 when it was closed
 - Statements from review applicant's St George account for periods from 2018-2021
 - Statements from the parties' CBA joint account from January 2018 to May 2021
 - Applicant's 2019/2020 Tax summary indicating he declared the sponsor as his spouse
 - Untranslated screenshots of chats – parties and content not specified.
 - Form 888s from Thai Binh Nguyen and My Phoung Uyen Huynh, friends of the sponsor
34. The submission addresses the issue of the applicant's failure to mention the sponsor's gambling issue until it was referred to by the sponsor in her evidence. It was submitted that the applicant did not mention this issue because it was only a problem in the past and she has since ceased gambling so he does not consider it a present issue in the relationship. Various explanations were given for the applicant's failure to provide more evidence about

this matter, including that he had diminished capacity due to the intimidating environment of the Tribunal hearing. It was explained his mind went blank on several occasions, including that he was unable to recall the name of the sponsor's uncle who lives with them, and that for this reason his omission should not detract from his otherwise credible and honest evidence of the genuineness of the relationship.

35. On 22 June 2021 the Tribunal invited the applicant's response to information contained in the post hearing evidence submitted relating to regular transactions (deposits and withdrawals) attributed to Agency AUST POST LANSVALE appearing in the sponsor's account which had not been mentioned in either of their evidence at hearing, and also requesting clarification of when the sponsor declared her marriage to Centrelink given that she appeared to be receiving Newstart payments in 2015-2016. The Tribunal received a response from the applicant on 5 July 2021, which is discussed below.

36. **FINDINGS AND CONSIDERATION**

37. For the following reasons, having carefully considered all of the evidence before the Department and Tribunal, including the additional documentary evidence provided to the Tribunal since lodgement of the review in 2018, the passage of time since then and the oral evidence of the applicant and sponsor at the hearing, the Tribunal is satisfied the applicant and sponsor are in a genuine spouse relationship as at the time of its decision. Although as discussed further below, it had some concerns about the inception and rapid progression of the relationship and the evidence revealed at the hearing about the sponsor's level of indebtedness and gambling issue and applicant's initial omission in referring to this matter, the Tribunal has determined, on balance, taking into consideration the passage of time and a holistic view of the evidence before it, that it is satisfied they are in a genuine spouse relationship. The Tribunal's assessment of evidence and reasons for these conclusions follow.

Whether the parties are in a spouse or de facto relationship

38. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
39. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

40. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

41. The Tribunal has considered the documentary and oral evidence relating to the circumstances of the relationship and makes the findings below addressing matters referred to in r.1.15A(3).

42. *Financial aspects of the relationship*

43. The evidence before the Tribunal is that the applicant and sponsor use and operate a joint bank account. The applicant's wages are paid into this account and it is used to pay the sponsor's loan payments, electricity, water, rates and other household expenses. The applicant transfers \$1000 per month to his personal account and uses this money to send financial support to his son and parents overseas, as well as other personal expenses. The sponsor does not work. The parties have not purchased any property assets since marriage. The sponsor has incurred further loans (secured against the equity in the property she solely owns, which predates the commencement of the relationship) to repay her gambling debts. The Tribunal observes the applicant did not offer this information to the Tribunal until it was put to him for response from the sponsor's evidence. Initially this caused the Tribunal some concerns as it would expect a partner in a relationship to be aware of and concerned about their partner accumulating substantial gambling debts which are to be repaid from family income. The sponsor's evidence was that the applicant was aware of this and she could not explain why he failed to mention it other than saying he had memory issues. The Tribunal is not convinced that poor memory explains this omission. When pressed, the applicant did not deny knowledge of the gambling or debts and insisted that he urged the sponsor to cease gambling. In post hearing submissions, the explanation offered was that he did not initially refer to it because it is not currently an issue in their relationship, as the sponsor has ceased gambling for now. It was also explained that the applicant was nervous and intimidated by the Tribunal process and this also explains omissions in his evidence. Ultimately, the Tribunal finds on the evidence that the sponsor has substantial debts, which are repaid from joint income. This, of itself, is not inconsistent with a genuine spouse relationship and they otherwise share day to day household expenses in a manner consistent with a genuine relationship.

44. The Tribunal also noted and sought explanation from the applicant about another source of regular income revealed in the sponsor's personal account that was not mentioned by the parties at hearing. In his response to the Tribunal dated 5 July 2021 the applicant indicated that he asked his wife about these transactions and she informed him that they relate to her gambling winnings which were paid to her by cheque which she deposited and then withdrew to continue gambling. He explained that this was occurring during the period she was still having problems with her gambling issues. While on the one hand, the applicant's apparent lack of knowledge of this until the Tribunal queried it casts some doubts about his knowledge of the sponsor's gambling issue and consequently potentially their relationship, on the other hand it is also not inconsistent with the behaviour of individuals who have gambling problems. The Tribunal acknowledges that secrecy and denial is not an uncommon response from a partner in a relationship who has a gambling problem.¹ Ultimately, the Tribunal accepts the applicant has provided a reasonable and credible explanation about this and it does not adversely impact the Tribunal's conclusion above relating to the financial aspects of the relationship.

45. *Nature of the household*

¹<https://insidegambling.com.au/editions/2/articles/gamblers-help-fincncial-counsellor-pam-mutton>

46. The applicant and sponsor reside together at a property owned by the sponsor for many years. They have lived together at this address since 2014, when the applicant returned to Australia. They gave evidence of each other's daily routines, and the applicant's workplace and hours of attendance. Their evidence of the housework routine was also generally consistent. Both said the sponsor does most of the cooking and the sponsor helps with laundry and chores on weekends. They live together with an adult daughter of each of them and both were reasonably familiar with the work and circumstances of these children. The applicant continues to financially support his younger son overseas and has plans to bring him to Australia in future. The sponsor was familiar with, and supported, the applicant's support for his son and the Tribunal accepts they have discussed, and are in agreement, of the plan to bring him here in future.
47. Having considered the evidence of the nature of the household, the Tribunal is satisfied the applicant and sponsor are residing together as a couple, and there is sufficient evidence of the nature of the household that is consistent with a genuine partner relationship of this duration.

48. Social aspects of the relationship

49. The evidence supports that the applicant and sponsor are familiar with and have met significant members of each other's extended family. The applicant knows and regularly sees the sponsor's elder daughter in Sydney and has travelled to Melbourne with the sponsor and met her siblings there. They attended the wedding of her brother in Melbourne as a couple. The sponsor travelled with the applicant to Vietnam and met his parents, siblings and son, and he met her extended family members. A significant number of statutory declarations and photos were provided to the Department and Tribunal attesting to the couple representing as a married couple and socialising together. Evidence of joint travel is before the Tribunal. The sponsor told the Tribunal she previously received Centrelink payments which ceased after she advised them of the relationship indicating that she has declared the relationship to official bodies. Information contained in the sponsor's personal CBA statements indicates she continued to receive Newstart payments during 2015 and 2016 after they married. The Tribunal sought further clarification about this from the applicant in its letter of 22 June 2021. In response the applicant reiterated their evidence that the sponsor advised Centrelink of the marriage and were unable to obtain confirmation from Centrelink of the date when she made this declaration. He offered as a possible explanation that initially he was not working and this may explain why her Centrelink payments continued for a period. The Tribunal has considered the applicant's response to this matter, and accepts it as a plausible and reasonable explanation. It accepts that from 2016 the sponsor's Centrelink payments ceased and she is not at this time working or receiving Centrelink payments, which is consistent with their evidence. The applicant also indicated that he declared the sponsor as his spouse to the ATO, and a copy of his most recent tax summary provided supports this.
50. The Tribunal is satisfied on the evidence that the social aspects of the relationship is consistent with a genuine partner relationship.

51. Nature of persons' commitment to each other

52. The applicant and sponsor met in 2014 and married that same year. The applicant had not long before divorced his previous wife in Vietnam and told the Tribunal he came to Australia to explore business opportunities. Both parties insisted that their meeting was a coincidence and not by introduction. While the Tribunal had some concerns about the coincidental nature of their meeting and rapid progression of the relationship to marriage, it observes that since then a period of over 6 years has passed and they have remained living together continuously. It finds the duration of the relationship for this period is strongly supportive of a

genuine and ongoing relationship. The only visits back to Vietnam for the applicant since then has been with the sponsor, and they have provided evidence to support that they travelled together on that visit. Another issue which arose at the hearing that caused some concern for the Tribunal was the revelation of the sponsor's substantial debts from gambling, and this raised concerns about whether this factor may have motivated the sponsor to enter into the relationship. However the Tribunal is mindful of judicial authority that states people enter into marriages for all kinds of motives and reasons including material benefit or advancement, or the hope of becoming eligible to reside in a particular country and this of itself is not inconsistent with a genuine marriage relationship.² While not without some doubts and concerns, on the weight of evidence before it, the Tribunal is satisfied that while each party may have had particular motivations (the sponsor, financial security and the applicant, a migration outcome) they have, over the prolonged period of processing of the application demonstrated a mutual commitment to a shared life as a couple and a genuine and continuing relationship, in the sense of one that is enduring for a period into the reasonably foreseeable future.

53. Therefore, despite the above concerns, the Tribunal is satisfied on balance, having considered all of the evidence before it, including oral evidence from the applicant and sponsor obtained over several hours at hearing and the supporting documentary material, that the relationship is genuine and ongoing.
54. On the basis of the findings and conclusions above, the Tribunal is satisfied the applicant and sponsor have a mutual commitment to shared life to the exclusion of others; the relationship is genuine and continuing ; and they live together and therefore the applicant meets the requirements of s5F(b)-(d) of the Act at the time the visa application was made and the time of this decision.
55. Therefore the applicant meets cl 820.211(2)(a) and.820.221(1)(a).
56. The Tribunal accepts the applicant is sponsored by the sponsoring partner and therefore meets cl 820.211(2)(c). As he held a substantive visa at time of application, cl 820.211(2)(d) does not apply.
57. Therefore the applicant satisfies the requirements of cl.820.211(2) and accordingly cl. 820.221(1).
58. The Tribunal accepts, on the available evidence, that the second named visa applicant is the daughter of the applicant and that she was residing with, and dependent on, the applicant at time of application and therefore meets cl.820.311.
59. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

60. The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner) visa:
 - cl 820.211(2) of Schedule 2 to the Regulations
 - cl 820.221(1) of Schedule 2 to the Regulations;

²*Re MILGEA and Dhillon* [1990] FCA 144, citing with approval Street CJ in *R v Cahill* (1978) 2 NSWLR 453 at 458, also referred to as still relevant in *Garcevic v MIAC* [2012] FMCA 931 at [34].

• and the second named applicant
meets:

- cl 820.311 of Schedule 2 to the Regulations.

Meena Sripathy
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).